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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/072,916	02/12/2002	Robert H. Drake JR.	11-912	4237

7590

08/13/2003

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EXAMINER

PRATT, CHRISTOPHER C

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 08/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/072,916

Applicant(s)

DRAKE, ROBERT H.

Examiner

Christopher C Pratt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 May 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. Applicant's terminal disclaimer, amendment, and accompanying remarks filed 5/16/03 have been entered and carefully considered. Applicant's terminal disclaimer is found to overcome the double patenting rejection set forth in the previous action. Despite this advance, the amendments are not found to patently distinguish the claims over the prior art and Applicant's arguments are not found persuasive of patentability for reasons set forth herein below.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is indefinite because of the phrase "exclusive of said layer of nonwoven material." The term "exclusive" does not limit the metes and bounds of the claim. How is the nonwoven layer "exclusive" when it is adhered to the carpeting?

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1-3, 7-9, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Drake, Jr. et al (5658430 or 5849387) each in view of Hamilton et al (5693400), as set forth in the previous rejection.

Applicant argues that the combination set forth above does not teach a nonwoven layer "exclusive" of the carpeting. Applicant argues that the instant invention is distinct from said combination because the nonwoven layer taught by Hamilton is integrally fused to the carpet layer.

Applicant claims the nonwoven layer and the carpet layer to be integrally attached via a wet-laid adhesive layer. Hamilton also teaches the nonwoven layer and the carpet layer to be attached via a wet laid adhesive (col. 7, lines 32-45). Therefore, both applicant and the combination set forth above utilize the same carpet and nonwoven attachment means and it is the examiner's position that the nonwoven layer of said combination is as equally "exclusive" as applicant's invention.

Applicant argues that "the present invention requires a totally separate and independent nonwoven layer not chemically fused to the new carpeting as in Hamilton." Applicant's argument is not commensurate in scope with the claims. As claimed, the present invention requires the nonwoven to have a pressure sensitive adhesive on one face and carpeting attached to the opposite face via a wet laid adhesive. The nonwoven of applicant's invention is not "totally separate and independent" from the carpeting layer because the two layers are connected with a wet laid adhesive.

Applicant argues that it would not have been obvious to dissect the nonwoven layer of Hamilton and insert it into the laminate of Drake. Hamilton teaches the

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nonwoven fabric layer to be used as a backing (col. 1, lines 30-34 and col. 4, lines 10-22). Hamilton also specifically teaches the backing to be a "separate" and "independent" layer from the carpet (col. 7, lines 48-49). Therefore, Hamilton provides a direct teaching to "dissect" the backing layer.

Moreover, the examiner notes that there is no need to dissect the layers of Hamilton. Hamilton teaches a carpet adhered to a nonwoven via a wet laid adhesive and a pressure sensitive adhesive on the opposite face of the nonwoven. Combined with Drakes teachings to adhere such a substrate to an existing flooring surface the combination teaches applicant's invention without any "dissection."

Applicant argues that a nonwoven layer would not provide increased cushioning. Applicant supports this assertion by pointing out that other products, such as carpet pads, also provide cushioning. However, it is the examiner's position that the existence of other cushioning products does not negate the fact that a nonwoven fabric also provides a cushioning effect. The examiner notes that Hamilton's nonwoven fabric also provides the additional benefit of increased dimensional stability.

Applicant argues that the choice of a pressure sensitive adhesive would not have been obvious because Hamilton is primarily concerned with the creation of carpet tiles and such applications do not require the stronger bonds needed in broadloom carpeting. However, Hamilton teaches the pressure sensitive adhesive to be suitable for carpet tile as well as full carpeting (col. 2, lines 10-14). Therefore, Hamilton directly contradicts applicant's assertion. Said rejection is maintained from the last action.

6. Claims 4-6, 10-12, and 14 rejected under 35 U.S.C. 103(a) as being unpatentable over Drake, Jr. et al (5658430 or 5849387) each in view of Hamilton et al (5693400) and Helbling (4857566), as set forth in the previous rejection.

Applicant argues that there is no gap in the teaching of Hamilton. However, Hamilton only provides a base teaching to utilize a pressure sensitive adhesive without teaching the skilled artisan which pressure sensitive adhesive to use. The skilled artisan would have to look to the prior art in order to practice the invention of Hamilton. The prior art teaches that latex pressure sensitive adhesives having shredded fiberglass are desirable in carpet applications.

Applicant argues that the skilled artisan would not find improved moisture resistance beneficial because Hamilton uses a PVC backing. However, this PVC backing taught by Hamilton is merely an optional alternative embodiment and is not relied upon in the instant rejection. Said rejection is maintained from the last action.

7. Claims 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Drake, Jr. et al (5658430 or 5849387) each in view of Hamilton et al (5693400) and Applicant's Admitted Prior Art (AAPA).

As set forth above, the combination of Drake and Hamilton teach the desirability of a fabric backing for carpeting. Hamilton fails to teach the fabric to have stitching and weft reinforcing threads.

In the specification of the instant invention and in the specification of the parent application, which has matured into Patent number 6,457,961B1, applicant admits that there is a product named TEXTRON already commercially available. TEXTRON is a

nonwoven fabric with stitching and weft reinforcing threads used as carpet backing. It would have been obvious to utilize this product as the fabric backing layer of Hamilton. The skilled artisan would have been motivated to utilize TEXTRON by the desire to improve the dimensional stability and load spreading properties, prevent carpet rucking and stretching, dissipate stress, and act as an effective soil barrier.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Pratt whose telephone number is 703-305-6559. The examiner can normally be reached on Monday - Friday from 7 am to 4 pm.

If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



Christopher C. Pratt
August 2, 2003



CHERYL A. JUSKA
PRIMARY EXAMINER